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AUTHOR Sistrunk, Walter E.; Guin, Mary Linda
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ABSTRACT

This paper offers administrators, teachers, and school boards an introduction to legal issues surrounding teacher dismissal and school desegregation and summarizes a study of all teacher dismissal cases heard from 1970 through 1981 in the Fifth Circuit Court of Appeals. Most of the report is devoted to an overview of the historical development of the interpretation of the due process clause and to a review of landmark school desegregation and teacher dismissal cases involving due process rights. A compilation of teacher dismissal cases was analyzed for patterns of commonality among the court decisions with regard to the school system's dismissal procedures. Due generally to an inadequate number of decisions, no patterns of commonality were found in cases charging violation of teachers' First Amendment rights or involving teacher dismissals alleging incompetence, immorality, insubordination, or felony conviction. A pattern of commonality was found among decisions involving the due process procedures followed by districts, with those closely following relevant statutes usually upheld, and those diverging from the statutes usually found unreasonable or arbitrary. In contract nonrenewal cases school systems were commonly upheld if they had adhered to state employment requirements or school board policies in contract procedures. General guidelines for ensuring due process are provided. (MJL)

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FEDERAL LITIGATION ARISING FROM PERSONNEL PRACTICES OF SOUTHERN SCHOOL BOARDS FROM 1970 THROUGH 1981 IN THE FIFTH CIRCUIT COURT OF APPEALS AREA

Presentors:

Dr. Walter E. Sistrunk,
Professor of Educational Leadership
Mississippi State University

and

Dr. Mary Linda Guin,
Assistant Principal
Northwest Junior High School
Meridian, Mississippi

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NATURE AND SCOPE OF THE STUDY

The purpose of this study was to investigate the legal problems arising from the personnel practices of school boards. This study examined all the cases involving teacher dismissal that were heard in the Fifth Circuit Court of Appeals or the Federal District Courts within the Fifth Circuit region from 1970 through 1981. This study examined the findings of the court in each case and identified commonalities of school board actions as revealed by court findings.

Introduction and Background

In previous decades, controversies regarding teacher dismissals were so few that they were viewed by the news media as spectacular. Therefore, almost everyone was aware of the outcome of the challenge to the established order when a teacher protested being dismissed. Many court cases have tested the rights of teachers with the focus of society now on the protection and preservation of individual liberties since the 1950's.[1]

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[1]George M. Johnson, Education Law, (East Lansing: Michigan State University Press, 1969), pp. 34-35.

Many of the judicial decisions regarding employment of professional personnel have centered about the due process rights of the individual involved. The Fifth Amendment to the United States Constitution states: "...no person...shall be deprived of life, liberty, or property, without due process of law..."[2] The Fifth Amendment applies only to actions of the federal government. However, the Fourteenth Amendment applies to actions of the states and reads in part, "...nor shall any State deprive any person of life, liberty, or property, without due process of law..."[3] The Fourteenth Amendment to the United States Constitution has provided the basis for the vast majority of teacher dismissal cases that have been brought before the courts.

It is well established that the dismissal of a teacher by a school board is not final and conclusive -- an appeal may be made to the courts. When an appeal is made to the courts by an aggrieved teacher, the court will, as a rule, make a determination of three things: (1) Did the board of education have jurisdiction, that is, did it act within the scope of its authority? (2) Did the board follow the procedures prescribed by statute? and (3) Did the board have some reasonable basis for its actions? The courts do not allow a board to dismiss a teacher for arbitrary,

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[2]William R. Hazard, Education and the Law, (New York: The Free Press, 1971), pp. 5-6.

[3]Ibid.

illegal or capricious reasons. They require a board to follow the statutory mode of dismissal. What the courts will not do is to re-examine evidence in order to determine its credibility or where the preponderance of it lay. It will examine the evidence only to determine whether the board acted reasonably or arbitrarily. The board's finding will be overruled only when it has acted arbitrarily, unreasonably, and without any substantial basis of fact.[4]

Many cases involving teacher dismissals were brought to the Fifth Circuit Court of Appeals and Federal District courts between 1970 and 1981. The bases for most of these cases developed in the 1960's as most school systems were changing from a dual system of education (segregated) to a unitary system of education (desegregated). Many of the cases heard in the 1970's involved desegregation of schools and followed the landmark case of Brown v. Board of Education of Topeka, Kansas, which ended the practice of having dual school systems.[5] The many desegregation cases emphasized the rights of individuals. This resulted in an upsurge of

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[4]State ex rel. Rockwell v. State Board of Education, 213 Minn. 184, 6 N.W. (2d) 251, 143 A.L.R. 503; State ex rel. Ging v. Board of Education of Duluth, 213 Minn. 550, 7 N.W. (2d) 544; Blair v. Board of Trustees, 161 S.W. (2d) (Tex.) 1030; Laney v. Board of Instruction of Orange County, 153 Fla. 738, 15 So. (2d) 748.

[5]Michael W. LaMorte, "The Fourteenth Amendment: Its Significance for Public School Educators," Educational Administration Quarterly 10 (Autumn, 1974): pp. 11-12.

interest in the violations of teachers' rights. During the 1970's and 1980's many cases were appealed involving dismissal of professional personnel and right to due process.

Purpose of the Study

The purpose of this study was to investigate legal problems arising from personnel practices of public school systems.

The specific purposes of this study were to:

(1) Make a compilation of all Fifth Circuit Court of Appeals and Federal District Court cases involving teacher dismissals from 1970 through 1981;

(2) Provide an overview of the historical development of due process in those states and territories included in the Fifth Circuit Court of Appeals jurisdiction; and

(3) Provide information that can help make school teachers, administrators, and school board members more cognizant of the legally rendered decisions involving teacher dismissals.

Need for the Study

The need for this study arose because litigation surrounding teacher dismissal rights has become a major area of public school legal controversy. Teachers, administrators, and school board members need to become familiar with the decisions of previous cases which govern their potential actions in teacher dismissal situations in order to deal intelligently with the many aspects of this legal

problem area.

Professional personnel have a special need to be fully aware of the decisions of court cases that govern their dismissal rights and liabilities if they are to effectively perform their professional obligations.

School administrators can benefit from the findings of this study for three reasons: (1) The principles derived from decisions on teacher dismissals are similar to those affecting administrative dismissal rights and obligations. (2) Administrators are brought in as defendants in teacher dismissal suits. (3) It is necessary sometimes for an administrator to "educate" his school board and school board attorney in school law and related areas such as previous pertinent court cases.

School board members, acting in their capacity as policy makers, are vested with the authority to dismiss teachers. Therefore, they have a particular need to be fully cognizant of the previous court decisions rendered which could affect their actions in teacher dismissal procedures.

Statement of the Problem

The problem was to identify commonalities among legal decisions rendered in the Fifth Circuit Court of Appeals and the Federal District Court cases of the Fifth Circuit Region from 1970 through 1981 involving teacher dismissals by public school systems in the area.

As a means of structuring the problem, answers were sought to the following questions:

(1) Is there a pattern of commonality that exists among the rulings of the Fifth Circuit Court of Appeals and Federal District Court of teacher dismissal cases in regard to dismissal procedures involving constitutional due process as followed by school systems in the Fifth Circuit?

(2) Is there a pattern of commonality that exists among the rulings of the Fifth Circuit Court of Appeals and Federal District Courts of teacher dismissal cases in regard to dismissal procedures involving teacher incompetence as followed by school systems in the Fifth Circuit?

(3) Is there a pattern of commonality that exists among the rulings of the Fifth Circuit Court of Appeals and Federal District Courts of teacher dismissal cases in regard to dismissal procedures involving teacher immorality as followed by school systems in the Fifth Circuit?

(4) Is there a pattern of commonality that exists among the rulings of the Fifth Circuit Court of Appeals and Federal District Courts of teacher dismissal cases in regard to dismissal procedures involving teacher insubordination as followed by school systems in the Fifth Circuit?

(5) Is there a pattern of commonality that exists among the rulings of the Fifth Circuit Court of Appeals and Federal District Courts of teacher dismissal cases in regard to dismissal procedures involving teacher contract

non-renewal as followed by school systems in the Fifth Circuit?

(6) Is there a pattern of commonality that exists among the rulings of the Fifth Circuit Court of Appeals and Federal District Courts of teacher dismissal cases in regard to dismissal procedures involving teacher rights to the First Amendment of the United States Constitution as followed by school systems in the Fifth Circuit?

(7) Is there a pattern of commonality that exists among the rulings of the Fifth Circuit Court of Appeals and Federal District Courts of teacher dismissal cases in regard to dismissal procedures involving teachers accused and convicted of felonies as followed by school systems in the Fifth Circuit?

The Constitution of the United States provides for the establishment and functioning of three branches of the federal government. Article I provided for the legislative branch; Article II established the executive branch; and Article III dealt with the judicial branch. Each of these three branches of government has authority and responsibility for functions which bear significantly on the public schools. However, in recent years, more public attention has been focused on the judicial branch of the federal government than on the legislative or executive branches in matters concerning local school districts.

During the sixties and seventies the United States Supreme Court began a series of reexaminations of the Constitutional issues related to the organization and finance of public schools in this country. It was during this period of time that school administrators and school board members witnessed an upsurge in the number of school-related court decisions, statutory enactments, and legislative actions pertaining to public education. The local interpretations and enactments have had a far-reaching influence on the lives of all persons associated with public education.[6]

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[6]Landmark Court Cases Affecting School Governance, Arizona Educational Information System (Feb., 1979), pp. 1-2.

An understanding of these legislative enactments and judicial interpretations within the framework of law is basic to sound operational practice and to effective decision making in classrooms, administrative organizations, and board meetings of local school districts.

The Constitution of the United States was completed on September 17, 1787. In 1789, the first ten amendments were submitted to Congress and ratification of them was completed on December 15, 1791. These amendments constitute the Bill of Rights. The framers of the Constitution feared that the new Constitution had created a system of government which, if its powers were not restricted, might someday have the power to unduly infringe upon the civil rights of individual citizens. The Bill of Rights was designed to guarantee individuals certain basic personal safeguards and freedoms.[7]

Some of these amendments to the United States Constitution have had tremendous effect on education. The First Amendment is involved in a majority of the cases brought by, or which affect, teachers or schools. The First Amendment states that:

> Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or of the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

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[7] Marcel Lewinski, American Government Today, (Glenview, Illinois: Scott, Foresman and Company, 1980), pp. 34-37.

The First Amendment protects the freedoms of: religion, speech, press, and right to peaceful assembly. Prior to the 1960's the first clause respecting establishment of religion had the greatest effect on schools. In recent years, teachers and administrators have brought an increasing number of suits to the courts concerning their rights to freedom of speech and association. Many changes in the law resulted from cases heard between 1960 and 1970.[8]

The Fifth Amendment provides certain other protections for individuals accused of crime, and it also prevents the state from taking property without just compensation. The Fifth Amendment states that:

> No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury,...nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, or be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation.

Several aspects of this amendment have had an effect on public schools. Teachers and administrators have at times sought to use the privilege against self-incrimination in instances involving loyalty oaths and possible connections with subversive organizations. School districts are affected

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[8]Michael W. LaMorte, "The Fourteenth Amendment: Its Significance for Public School Educators," Educational Administration Quarterly 10 (Autumn, 1974): 6-7.

by the last clause of this amendment in that they are required to pay just compensation in condemnation of proceedings.[9]

The Fourteenth Amendment to the Constitution is often referred to as the due process clause and the equal protection clause. Section 1 of this amendment defines citizenship and specifies that citizens have certain privileges:

> ...No State shall make or enforce any law which shall abridge the privileges and immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Adopted in 1868 primarily as a measure to safeguard the rights of newly freed slaves, this Amendment has had widespread application to guarantee the rights of individuals. It ensures that the rights and privileges accorded by the Federal Constitution and laws are available to citizens of all states, including, for example, the rights of free speech and religion guaranteed by the First Amendment.[10]

Although very complex in their application, the essence of the due process and equal protection clauses of the Fourteenth Amendment is that all states or agents thereof, must treat all their constituents equally and fairly. Due process and equal protection stem from the ideal

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[9] Louis Fischer, David Schimmel, and Cynthia Kelly, Teachers and the Law (New York: Longman, 1981), pp. 158-160.

[10] LaMorte, "The Fourteenth Amendment: Its Significance for Public School Educators," pp. 2-4.

of fairness in applying the law. In cases pertaining to educational matters where the Fourteenth Amendment is the basis of argument, it is usually found that due process or equal protection of the law, or both, has been denied. These concepts are understood when one keeps in mind that they require government officials to be fair when dealing with their clients.[11]

Many of the judicial decisions regarding teacher employment have centered about the due process rights of the individual involved. It is "axiomatic that teachers may not be treated arbitrarily or capriciously, but just what rights must be accorded teachers is the continuing subject of litigation, which often focuses upon the concept of due process."[12]

There is no absolute or final definition of due process of law. The courts have refused to formulate a precise definition and have preferred to describe it as developing, "by the gradual process of judicial inclusion and exclusion," [Davidson v. New Orleans, 96 U.S. 97 (1877)]. In general it may be said that due process is met when principles of fair play are invoked and when actions are

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[11] Ibid., p. 192.

[12] D. Parker Young and Donald D. Gehring, "Teacher Employment Rights and Due Process," Educational Horizons (Fall, 1975), p. 52.

reasonable, just, and not arbitrary. To set forth precisely what constitutes due process is impossible. However, the United States Supreme Court stated a principle that sheds light on the considerations to be included in determining due process when it stated:

> Due process is not a mechanical instrument. It is not a yardstick. It is a process...The precise nature of the interest that has been adversely affected, the manner in which this was done, the reasons for doing it, the available alternatives to the procedure that was followed, the protection implicit in the office of the functionary whose conduct is challenged, the balance of hurt complained of, and the good accomplished - these are some of the considerations which must enter the judicial judgment [Joint Anti-Fascist Refugee Committee v. McGrath, 341 U. S. 123, 71 S.Ct. 724, 95 L.Ed. 817 (D.C., 1951)] .

There are two kinds of due process, procedural and substantive. Procedural due process refers to the procedures and methods employed in seeing that laws and regulations are carried out and enforced. This includes courtroom procedures involving teachers.[13] Substantive due process, on the other hand, goes to the very heart of the law or regulation in question. It, "questions not merely the procedures and methods employed in any proceeding, but whether the purpose of the law or regulation is fair, reasonable, and just."[14] Therefore, it is not difficult to ascertain why courts have preferred to abstain from a precise and complete definition of due process, electing instead

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[13] Ibid., p. 53.

[14] Ibid.

to decide each case on its own merits.[15]

Until 1897 due process applied only to the procedural aspect. In that year, the Supreme Court, in Allgeyer v. Louisiana [165 U.S. 578 (1897)] held that a state statute prohibiting anyone from doing business with an insurance company not licensed in the state was a deprivation of liberty without due process of law. Thus was substantive due process introduced.

Substantive due process was used sparingly until 1937. Prior to that date, laissez-faire economic theory prevailed, and the courts decided many cases upon the doctrine of "liberty of contract." This doctrine dictated "that business liberty should prevail; that is, that any unreasonable interference with the liberty of employers and employees to contract with one another was invalid."[16] This was the basis for courts striking down laws regulating hours of labor, setting minimum wages, regulating prices, and prohibiting employers from discharging workers for union membership. In 1937 the Supreme Court handed down a landmark decision, West Coast Hotel v. Parrish [300 U.S. 379 (1937)] in which substantive due process was given added meaning. In that case the court upheld a Washington minimum wage law by stating: "Protection of the community against evils menacing the health, safety, morals, and welfare of

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[15] Ibid.

[16] Ibid.

the people is due process."[17] Since 1937 the courts have relied upon, "the gradual process of judicial inclusion and exclusion," and have preferred to decide each case on its merits.[18]

Although due process is not fixed, but depends upon a multitude of conditions, there are certain guidelines of fair treatment that are usually included under the topic of procedural due process. These generally accepted guidelines are that the accused individual shall be provided a notice of the charges against him, specific enough to permit him to defend against them. The notice should also inform the accused of the time, date, and places at which a hearing will be conducted. Finally, the notice should inform the accused of the nature of the evidence against him and the names of witnesses who will present evidence.[19]

A hearing shall be conducted at which the accused is permitted to present his side of the story. The length of time between the notice and the actual hearing should be reasonably calculated to provide the accused enough time to prepare a defense against the charges. The hearing should be conducted by an impartial person or persons and guilt should be based only upon sufficient evidence. A transcript of the hearing should be kept and the accused, if found

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[17] Ibid.

[18] Ibid.

[19] Ibid.

guilty, should be afforded the right of appeal.[20]

Administrative proceedings involving teachers have been held to be, "civil and not criminal proceedings and therefore do not necessarily require all of the judicial safeguards and rights accorded to criminal proceedings."[21] Suits dealing with questions of due process and equal protection are brought in equity.[22] In this type of action there is no jury, and the judge(s) is the sole determiner of what constitutes due process or equal protection, subject only to review by a higher court. Judgment regarding due process and equal protection is generally made on the basis of many variables, such as a close examination of the particular facts of a case, decisions in previous cases, and possibly the introduction of social science findings.[23]

The best-known application of the equal protection clause of the Fourteenth Amendment is in Brown v. Board of Education of Topeka, Kansas, where the Supreme Court held that dual school systems discriminated against black children. By overturning the, "separate but equal," doctrine, which had permitted the existence of dual school systems, and by

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[20] Richard D. Gatti and Daniel J. Gatti, Encyclopedic Dictionary of School Law (West Nyack, New York: Parker Publishing Company, Inc., 1975), pp. 109-110.

[21] Ibid.

[22] Ibid.

[23] Ibid.

holding that the courts should retain jurisdiction of cases until desegregation is achieved, the Court gave rise to many litigation suits. Implementation of subsequent decisions has required particular school districts to take such specific acts as redistricting attendance areas, reassigning faculty to achieve racial balance among schools, rejecting certain potential school building sites in favor of others, and busing children away from their neighborhood schools.[24]

Desegregation cases are excellent examples of the violation of equal protection or due process. The most recent cases of the violation of due process are included in Chapter 4 of this study. The Brown decision is a landmark case in the field of school segregation litigation. As was the case in most Southern communities, the response to the 1954 Supreme Court decision evolved slowly. The decision was interpreted initially to make illegal any state actions to foster segregation, but it did not require state actions to achieve desegregation as the Constitution does not require integration.[25] This interpretation spawned local, "freedom of choice," policies which allowed children to go to the school of their choice, thereby skirting official discrimination. However, the Civil Rights Act, passed by Congress in 1964, put pressure on

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[24] Albert P. Blaustein and Clarence Clyde Ferguson, Jr., Desegregation and the Law (New Brunswick, New Jersey: Rutgers University Press, 1957), pp. 180-185.

[25] Ibid.

Southern school districts to use methods other than, "freedom of choice," to eliminate dual school systems. In enforcing the Civil Rights Act of 1964, the Department of Health, Education, and Welfare began using a racial balance test to determine whether or not a dual school system still existed. Under this test, it was not sufficient for a board of education to have an official policy granting students the right to attend the school of their choice. A Southern school district had to demonstrate that a certain percentage of blacks or whites were actually attending formerly all black or all white schools.[26]

Immediately after the Brown decision, there was a period of relative quiet which preceded a storm. The Brown decision did not immediately order desegregation anywhere, but the three large cities of Baltimore, Louisville, and St. Louis chose to desegregate immediately. Cincinnati had desegregated a few years earlier, and Topeka had adopted a desegregation plan months before the decision.[27] In response to the Supreme Court decision, most Southern political leaders and editors rode the fence. However, in the Deep South many politicians were ready to, "throw down

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[26]Robert L. Church, Education in the United States (New York: Free Press, 1976), pp. 451-453.

[27]Robert L. Crain, The Politics of School Desegregation (Chicago: Aldine Publishing Co., 1968), pp. 226-227.

the gauntlet," and those states rallied to their defense. Border states continued to desegregate schools.[28] In 1954, 1955, and 1956, the states of Texas, Oklahoma, Kentucky, West Virginia, Maryland, and Delaware experienced considerable desegregation.[29] There were scattered demonstrations of opposition during those years but the first intervention on the part of the State to prevent local desegregation was Mansfield, Texas, and would become the pattern throughout the South. By the beginning of the 1956-57 school year the South was divided into two regions: the border states, where some desegregation had already taken place, and the Deep South, where nearly all schools would remain segregated for the next few years.[30]

In 1957, two examples of desegregation happened, and these two examples would serve as precedents for two opposing theories of desegregation. Little Rock, Arkansas demonstrated how to offer total resistance to desegregation. In this particular incident, Federal troops had been used to prevent disobedience to court orders and, it was determined by the Supreme Court that violence was not a justification for delaying desegregation.[31] The second example involved

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[28]Ibid., p. 227.

[29]Ibid.

[30]Ibid.

[31]Ibid., pp. 228-229.

a group of three cities in North Carolina that desegregated together that year. This alternative example showed that a city could accept school desegregation as inevitable and take whatever action was necessary to keep it limited to token integration.[32]

By 1959, local school officials throughout the South became aware of the dangers that accompanied massive resistance and people began trying to learn from the Little Rock and North Carolina experiences. It was at this point that "massive resistance" began to end. From then on, school systems continued to stall on desegregation.[33]

Between 1959 and 1963, the largest cities in each of the Southern states desegregated their schools: Miami in 1959; Houston and New Orleans in 1960; Atlanta, Dallas, and Memphis in 1961; Birmingham and Charleston in 1963.[34] At the state level, by 1963, the struggle to maintain segregated schools was ending.

The last of the period of school desegregation began in 1963 when local school systems were looking for ways to permit token desegregation without violence and without closing the schools. After this, the battle against the Brown decision was more of a delaying action. In 1963, 126 school systems desegregated without waiting for court

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[32]Ibid., p. 230.

[33]Ibid., p. 231

[34]Ibid.

orders. Then, in 1965, Title VI of the Civil Rights Act required the government to withhold federal aid from any segregated district, and 94 percent of the remaining districts agreed to desegregate that year. The only remaining area of strong resistance was parts of Mississippi and Louisiana.[35]

The decisions of the United States Supreme Court in the 1970's reveal a waning enthusiasm for court intervention in school governance. The task following the Brown decision was to desegregate the schools in seventeen Southern states and the District of Columbia where racially identifiable schools were maintained by law. The litigation since then has covered a myriad of issues some of which seem unrelated to the Brown decision. A stormy epoch in public education is approaching an end.[36]

Although the foregoing structuring of a general overview of desegregation cases is important in the development of due process and equal protection concepts, there are basic landmark cases involving teacher dismissal and due process rights. As early as 1914 a decision was handed down in the case of Jameson v. Board of Education, 74 W. Va. 389, 81 S.E. 1126 (1914), which stated that, "where a statute sets forth the grounds for removal of a teacher,

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[35]Ibid., pp. 230-231.

[36]Ibid., p. 231.

the statute must be strictly observed, and a teacher may not lawfully be dismissed on a ground not enumerated in the statute."[37] In a subsequent case, a decision was handed down in the case of State ex rel. Anderson v. Brand, 303 U.S. 95 (1938), which dealt with the legal principle which stated that "issuance of a contract to a teacher pursuant to state law constitutes a contract which cannot be impaired by a subsequent law, unless in the proper exercise of police powers."[38]

A basic landmark case involving teacher dismissal without due process of law was the case of Board of Regents v. Roth, 408 U.S. 564 (1972). Roth, a non-tenured professor at a public institution, claimed because he was never given notice of a hearing regarding reason for non-renewal of his contract that his constitutional rights were violated by depriving him of his "liberty" and "property." The Supreme Court disagreed with Roth and ruled that there are differences between probationary teachers and teachers who have tenure. The court further held that only the tenured teacher had a reasonable expectancy of continuous employment, which created a "property" interest meriting due process protection. Since the teacher does not have a right to a renewal of the contract, its non-renewal violates no rights.[39]

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[37] Drury, Principles of School Law, p. 206.

[38] Ibid., p. 202

[39] Fischer, Teachers and the Law, pp. 193-194.

Schools are under no legal obligation, unless required by local law, to give reasons for not renewing the contract of a probationary teacher. If, however, they do give such reasons, the teacher has a right to notice and hearing where the charges are examined and refuted. This was upheld in the cases of Lombard v. Board of Education of City of New York, 502 F.2d. 631 (2d Cir. 1974); Huntley v. North Carolina State Board of Education, 493 F.2d 1016 (4th Cir. 1974); McGhee v. Draper, 564 F.2d. 903 (10th Cir. 1977); and, Perry v. Sindermann, 408 U.S. 593 (1972).[40]

Another case whose principles have been applied to later cases was the Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274 (1977). Doyle, a public school teacher in Ohio, had exercised what he contended was his constitutional right to communicate with a local radio station critical remarks about his principal's memorandum concerning a dress code for teachers. He further contended that this exercise played a "substantial" part in the school board's decision not to renew his contract. Doyle won in district court but the decision was appealed to the Supreme Court. The Supreme Court remanded the case back to lower courts to determine if there were other factors which motivated the board's decision not to renew the contract. The Mt. Healthy Test is now used as a guiding principle applicable to First Amendment rights.[41]

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[40] Ibid., p. 197.

[41] Ibid., p. 196.

In addition to the constitutional right to due process, most states also have statutes that establish procedures for the termination of teachers. When such laws exist, they are strictly enforced by the courts, and boards of education must follow them without exception.[42]

If school boards and administrators are to be successful in teacher dismissal cases, the requirements of substantive and procedural due process of the Fourteenth Amendment must be satisfied. Due process in teacher dismissal is now fundamental in American public education.

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[42]Ibid., p. 197.

PROCEDURES AND METHODS

This study traced the history of due process procedures in those states included in the Fifth Circuit District and the cases that arose from the rights of due process as guaranteed by the Constitution of the United States of America for the period 1970 through 1981.

The study categorized those cases involving teacher dismissal of the Fifth Circuit Court of Appeals and the Federal District Courts of the Fifth Circuit Region from 1970 through 1981. The cases were annotated in descriptive form giving the background of each case, the grounds that existed for each case, the decision or decisions rendered by the Circuit Court judge, the significance of the case, and further appeals where applicable. These annotated cases include the topics of constitutional due process, teacher incompetence, teacher immorality, teacher insubordination, teacher contract non-renewal, teacher rights to the First Amendment, and teacher violation of the law. From these categories of annotated cases conclusions were drawn about common patterns that exist among the court decisions in regard to dismissal procedures of public school systems involved in those cases.

Treatment of Data

The information collected in each case involving teacher dismissal from 1970 through 1981 in the Fifth Circuit District led to an annotated entry on each case which included the background of each case, the grounds that existed for each case, the decision or decisions rendered by the Circuit Court judge, the significance of the case, the further appeals, where applicable. Each case was categorized into the following areas of cause for teacher dismissal: constitutional due process, teacher incompetence, teacher immorality, teacher insubordination, teacher contract non-renewal, teacher rights to the First Amendment, and teacher violation of the law. Once the cases were annotated and categorized the investigator then drew conclusions as to the common patterns that existed among teacher dismissal cases as to whether or not a school board was successful or unsuccessful in its practices of administering its personnel policies regarding teacher dismissal. The actual annotated cases are not included in this paper.

SUMMARY OF FINDINGS

Several significant patterns of commonality were found to exist among the cases examined in this study. These commonalities are summarized in this chapter according to each of the seven questions used to structure the problem.

There was a pattern of commonality among the legal decisions rendered in the Fifth Circuit Court of Appeals and Federal District Courts for the period 1970-81 involving teacher dismissals and the constitutional due process procedures followed by school systems in that district. This type of litigation contained the largest number of cases reviewed by the Fifth Circuit Court of Appeals. Upon examination it was found that those school systems which closely followed general statutes, tenure statutes, and state fair employment dismissal acts, if applicable, were usually upheld in the appeals court decisions. Those school systems which did not closely follow general statutes, tenure statutes and state fair employment dismissal acts were usually found to be unreasonable, arbitrary, or unreasonable and in violation of due process in regard to teacher dismissal.

A pattern of commonality was not found to exist among the legal decisions rendered in the Fifth Circuit

Court of Appeals and Federal District Courts for the period 1970-81 involving teacher dismissal for incompetency. There was only one legal decision rendered in the area of teacher incompetency and the court ruled that discussion of homosexuality in an eighth grade class does not constitute just cause for dismissal of a teacher as incompetent.

A pattern of commonality did not exist among the decisions rendered in the Fifth Circuit Court of Appeals and Federal District Courts for the period 1970-81 involving teacher dismissal for immorality. There was only one legal decision rendered in the area of teacher immorality and the court ruled that school authorities have the right and duty to screen teachers who have been found guilty of making sexual advances to pupils even though teacher considered term "unprofessional conduct" as vague.

A pattern of commonality did not exist among the decisions rendered in the Fifth Circuit Court of Appeals and Federal District Courts for the period 1970-81 involving teacher dismissal for insubordination. There were no legal decisions rendered on this allegation.

A pattern of commonality existed among the decisions rendered in the Fifth Circuit Court of Appeals and Federal District Courts for the period 1970-81 involving teacher dismissals and contract nonrenewal procedures as followed by school systems in that district. Upon examination it was found that all boards of education are empowered to manage their respective school systems and are empowered to hire

and fire teachers as necessary. In cases of nontenured teachers, the court ruled that such nontenured teachers have no property interests in continued employment, nor is such a nontenured teacher deprived of liberty by non-renewal.

A pattern of commonality did not exist in the Fifth Circuit Court of Appeals and Federal District Court decisions for the period 1970-81 involving teacher dismissal for violation of First Amendment rights. There were three cases appealed to the Fifth Circuit Court of Appeals and the Federal District Courts. The courts ruled in favor of the school districts involved in the cases. It was found in each case that violation of First Amendment rights was not the reason for dismissal as claimed by dismissed teachers but instead, failure to maintain classroom discipline, leaving classroom unattended and reporting to work tardy.

A pattern of commonality did not exist in the decisions of the Fifth Circuit Court of Appeals and Federal District Courts for the period 1970-81 involving teacher dismissal for having been convicted of a felony. There were no legal decisions rendered in this area.

Conclusions

Based on the cases studied, certain conclusions were reached relative to the pattern of commonalities that exist among decisions rendered by the Fifth Circuit Court of Appeals and Federal District Courts for the period 1970-81.

1. A pattern of commonality existed in the decisions rendered in teacher dismissal cases involving due process in that the courts upheld those school systems who adhered to following legal statues, tenure statutes, and fair dismissal laws, where applicable.

2. A pattern of commonality existed in the decisions rendered in teacher dismissal cases involving teacher contract nonrenewal in that the courts upheld those school systems who adhered to tenure laws, if applicable, state employment requirements, or school board policies in procedures dealing with nonrenewal of contract.

3. A pattern of commonality was not found in the decisions rendered in teacher dismissal cases involving teacher incompetency. There was only one legal decision rendered in this grouping of cases.

4. A pattern of commonality was not found in the decisions rendered in teacher dismissal cases involving teacher immorality. There was only one legal decision rendered in this grouping of cases.

5. A pattern of commonality was not found in the decisions rendered in teacher dismissal cases involving teach-

er insubordination. There were no legal decisions rendered in this grouping of cases.

6. A pattern of commonality was not found in the decisions rendered in teacher dismissal cases involving violation of First Amendment rights. There were three legal decisions rendered by the court but it was found that the basis for the cases was not violations of First Amendment rights as claimed by the dismissed teachers.

7. A pattern of commonality was not found in the decisions rendered in teacher dismissal cases involving felony convictions. There were no legal decisions rendered in this grouping of cases.

General Guidelines For Due Process

Based on a review of the annotated cases contained in this study, the following general guidelines for due process are outlined:

1. Advise teacher of cause or causes for termination in sufficient detail to fairly enable him to show any error that may exist.

2. Advise teacher of the names and the nature of the testimony of the witnesses against him.

3. After being advised, allow the teacher a meaningful opportunity to be heard in his own defense.

4. Judge should possess some academic expertise and should be impartial toward the charges.

5. Advise teacher in writing of the statement of

the findings, conclusions, and recommendations.

6. Advise teacher of right to further appeal.

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